FILE COPY

RECEIVED
OCT 31 1958
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

CLARENCE E. HODGES,
Petitioner,
vs.
JOE F. HODGES, Sheriff of Warren County, Kentucky et al.,
Respondents.
No. 419

and

JAMES B. SEARCY,
Petitioner,
vs.
JOE F. HODGES, Sheriff of Warren County, Kentucky et al.,
Respondents.
No.

CONSOLIDATED CASES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

CLEON K. CALVERT,
Asher Building,
Pineville, Kentucky,

LELAND H. LOGAN,
412 East Tenth Street,
Bowling Green, Kentucky,
Attorneys for Petitioners.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3050

INDEX

Introductory	1
(A) The Opinion Below	2
(B) The Petition for Rehearing and the Mandates Issued Below	2
(C) The Jurisdiction of the Court	3
(D) The Question Involved	3
(E) The Facts	3
(F) Why We Think We Have Been Deprived of a Substantive Right Without Due Process of Law, and Have Been Denied the Protection of Equal Laws	6
(G) Gregory v. Stubblefield	7
Appendix "A"—Opinion of the Court by Judge Montgomery	A1
Appendix "B"—Mandates	A10
Appendix "C"—Supersedeas Bond	A14

TABLE OF CASES

Anderson v. Likins, 104 Ky. 690, 47 S.W. 867	7
Crowe v. Emmert, 306 S.W. 2d 272	7
Ragan v. Burnett, 495 S.W. 2d 759	7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

CLARENCE E. HODGES,
Petitioner,
vs.
JOE F. HODGES, Sheriff of Warren County, Kentucky et al.,
Respondents.
No. .....

and

JAMES B. SEARCY,
Petitioner,
vs.
JOE F. HODGES, Sheriff of Warren County, Kentucky et al.,
Respondents.
No. .....

CONSOLIDATED CASES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

To the Honorable Chief Justice, and the Honorable Associate Justices of the Supreme Court of the United States.

The petitioners, Clarence E. Hodges and James B. Searcy, in the above styled consolidated cases, come now and respectfully file this their petition for a writ of cer-

tiorari to the Court of Appeals of Kentucky, ordering up the record in these cases, to the end that the records may be examined and reviewed, and all errors therein corrected, and the judgment of the Court of Appeals of Kentucky reversed, if so be error is found to exist in said judgments.

(A) THE OPINION BELOW.

The opinion of the Court of Appeals of Kentucky was delivered April 26, 1958, through Judge Montgomery, and a certified copy of that opinion, which was rendered in four consolidated cases, is filed with, as a part of this petition, as Appendix "A".

The other cases, consolidated with the two above styled are dissimilar, in form and content and have no bearing on the questions raised by this petition. No certiorari is being sought in those two cases.

(B) THE PETITION FOR REHEARING AND THE MANDATES ISSUED BELOW.

A petition for re-hearing having been seasonably filed, the Court of Appeals of Kentucky, overruled the same, on June 20th, 1958, extending the opinion so as to pass on a federal question raised. On that day it issued its mandates to the Warren Circuit Court and sent them down, and a certified copy of the mandates issued and sent down in each of the above styled cases is filed herewith, as a part hereof, as Appendix "B". They are marked "A" and "B" for identification.

(C) THE JURISDICTION OF THE COURT.

The jurisdiction of this Honorable Court is here invoked under the provisions of 28 U.S.C., Sec. 1257 (3); 28 U.S.C.A., Sec. 1257 (3).

(D) THE QUESTION INVOLVED.

The Court of Appeals of Kentucky is the highest Court in the State.

Where the highest Court in a state has decided and laid down certain principles for the application of those principles to cases of a certain class; and to all cases of a like or similar form and content, if the Court refuses to apply the principles it has thus announced in a case that demands their application, has it:

-a- Deprived a party of substantive rights, without "due process of law"? And

-b- Has it denied him the protection of equal laws?

(E) THE FACTS.

September 17, 1957, there was held in Warren County, Kentucky, two so-called "Local Option Elections". One of them was confined to the City of Bowling Green, the county seat of the county; the other to the hinterlands of the county outside the corporate limits of the city. The city election here is represented by the Hodges case; the county election by the Searcy case. Both cases are exactly similar in form and content. The result of the election in the city was that the city embraced prohibition, by a majority of 199 votes; in the county outside of the city the principles prevailed by a majority of 1849 votes.

October 10, 1957, Hodges, as the statute declared he had the right to do, filed in the Warren Circuit Court a contest of the election in the city; on the same day Searcy filed one against the election in the county.

In the complaints filed, the grounds of contest were the same in each case. They were stated in the complaint, to be as follows:

-a- Those persons who professed to conduct the election in certain named precincts, both in the city and the county, were not sworn as the law directs before entering on their official capacities. The oath is made essential by Kentucky Revised Statutes, sec. 116.120.

-b- Large numbers of persons were allowed to vote who did not sign the Comparative Signature Book as required by Kentucky Revised Statutes, Ch. 126. This statute has been held mandatory by the Court of Appeals of Kentucky, in Gross v. Helton, 267 S.W. 2d 67.

-c- Numerous persons attending the Western State College an educational institution in Bowling Green, who were not domiciled in Kentucky, or Warren County, but whose domicile was in other states or counties, were permitted to vote in Kentucky. A voter must vote in the place of his domicile, under the laws of Kentucky (Ky. Const., sec. 145; Elam v. Maggard, 154 Ky. 882, 178 S.W. 1046; Everman v. Thomas, 304 Ky. 156, 197 S.W. 2d 58).

-d- The same complaint about students from the Bowling Green College of Commerce.

-e- The Warren County Purgation Board, after purging the election rolls of certain voters, left their names in the rolls, and they voted.

-f- Teen age voters were permitted to vote who had not attained the age of 18 years at the time of the election.

-g- Persons were allowed to vote who did not possess the statutory and constitutional qualifications of residence in the precinct where they voted (KRS, sec. 117.010).

-h- Coercion and intimidation of the most insidious sort, which has been condemned by the Court of Appeals of Kentucky (KRS, sec. 118.240(2); secs. 118.080, 118.120, 115.330; Johnston v. Little, 176 Ky. 595, 198 S.W. 200; Ann. Cas. 1928A, 70).

-i- Voters physically disabled were voted and allowed to vote, contrary to the statutes (KRS, sec. 118.300).

-j- All these illegalities and irregularities so permeated the entire structure of the election as to render the same void and no election at all.

Since we have no printed transcript from which to page this statement, we are using the Hodges transcript on file in the Clerk's office, and the petition initiating this contest will be found there on pages 1 to 8. The Searcy transcript is identical in form and content.

The grounds of contest stated will be found in the Hodges transcript on pages 4 to 7.

The grounds of contest were stated briefly, but with enough particularity to notify defendants of what the grounds were and that is the main purpose of a petition in an election contest.

After petitioners had had access to the election records and learned the facts in detail, they, on October 31, 1957, tendered an amended complaint (See Hodges' transcript pp. 19-27). In this amended complaint we stated no new ground of contest, merely elaborating and giving in more detail the grounds of contest theretofore stated in the original complaint. This amended complaint the learned Judge

of the Warren Circuit Court, refused to allow filed; and the Court of Appeals of Kentucky, affirmed that judgment on April 25, 1958. The ground on which the Circuit Court based its refusal, was, as we gather it is, that we had not specified the names of any persons in the categories we had alleged, who voted illegally, and we have some trouble in finding out just what the philosophy of the Court of Appeals of Kentucky was.

We imagine, however, it was a distaste for sinful men who pay a large part of the taxes in the United States, paying some kind of tax every time they turn around, for the privilege of vending ardent spirits. That is the only basis on which the Court's opinion can rest, as we imagine what happened.

These are enough facts to present the questions involved in this application for certiorari. The only relief we sought was an invalidating of both elections.

(F) WHY WE THINK WE HAVE BEEN DEPRIVED OF A SUBSTANTIVE RIGHT WITHOUT DUE PROCESS OF LAW, AND HAVE BEEN DENIED THE PROTECTION OF EQUAL LAWS.

Our complaint is based on a firm belief that when the Court of Appeals of Kentucky lays down, with emphasis, certain rules that create substantive rights, we are, though weak and sinful, entitled to the benefit of those rules, and to have them applied to our case, if it is a proper case for their application, just like the saints would be so entitled in their own litigation.

-a- We say we had a substantive right to file these amended petitions, under rules laid down by the Court of Appeals of Kentucky years ago, and adhered to ever since.

The Court early laid it down that even after the period for filing an election contest (Local Option or otherwise), the contestant might amend his petition.

-a- In order to make the original petition more definite, more perfect or more elaborate, as to the grounds of contest stated (Wilson v. Hines, 99 Ky. 221, 85 S.W. 697; 37 S.W. 148).

-b- Or to correct a mistake in the original petition (Phillips v. Ratliff, 134 Ky. 304, 121 Ky. 460).

-c- Or in furtherance of justice (Campbell v. Combs, 272 Ky. 405):

but no new or additional grounds of contest may be stated (Anderson v. Likins, 104 Ky. 690, 47 S.W. 867). We submit that no new or additional grounds of contest are alleged in the amended petitions we sought to file; that they merely made more definite and certain the grounds originally relied on.

-b- The Court has held that where the relief sought is the voiding of the entire election, it is unnecessary to specify the names of illegal voters or the basis of their illegality (Crowe v. Emmert, 306 S.W. 2d 272; Ragan v. Burnett, 495 S.W. 2d 759).

These rules have become substantive law in election contests, and if they are applicable to a contest over the office of Sheriff of a county, they are applicable to all election contests, and if they are applied in one sort of contest, and denied in another, then the latter contest has been deprived of a substantive right without due process; and has also been denied the protection of equal laws.

(G) GREGORY V. STUBBLEFIELD.

There is now, before the Court of Appeals of Kentucky, a case styled Noble J. Gregory v. Frank J. Stubblefield,

which presents to the Court the same question that is presented by the cases at bar. In that case Gregory is trying to eliminate the entire vote in Logan County, for the nomination of a Democratic nominee for Congressman from the First Kentucky District, on the grounds of widespread fraud and corruption. Gregory has, as we understand, offered an amended petition, which the Circuit Court refused, on the same ground the Warren Circuit Court refused to allow ours. That case does not contain any liquor; it is pure politics, and we only mention it here because it is going to be interesting to see what the Court does about it. The Court refused to allow us to orally argue these cases before it, but on September 16, 1958, in Special Session this Court heard Arguments in this case. Sic transet gloria numbi.

There is filed with this petition, as Appendix "C" a certified copy of the step sheets in the Court of Appeals of Kentucky, showing the journey of the above styled cases through that Court.

Wherefore, the premises considered, the petitioners, Clarence E. Hodges and James V. Searcy, pray the Court to grant that the writ of certiorari to the Court of Appeals of Kentucky, ordering up the record in the above styled cases; and they pray an examination and review of those records and a reversal of the judgment of the Court of Appeals of Kentucky, in the above styled cases.

CLEON K. CALVERT,
Pineville, Kentucky,
LELAND H. LOGAN,
412 East Tenth Street,
Bowling Green, Kentucky,
Attorneys for Petitioners.

Pineville, Kentucky,
September 15, 1958.